

1 CROWELL & MORING LLP
2 Kathleen Taylor Sooy (*pro hac vice*)
3 ksooy@crowell.com
4 April N. Ross (*pro hac vice*)
5 aross@crowell.com
6 Rachel P. Raphael (*pro hac vice*)
7 rraphael@crowell.com
8 1001 Pennsylvania Avenue, N.W.
9 Washington, D.C. 20004
10 Phone: (202) 624-2500
11 Fax: (202) 628-5116

8 CROWELL & MORING LLP
9 Warrington S. Parker, III (SBN 148003)
10 wparker@crowell.com
11 3 Embarcadero Center, 26th Floor
12 San Francisco, CA 94111
13 Phone: (415) 986-2800
14 Fax: (415) 986-2827

15 *Attorneys for General Motors LLC*

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 RAUL SIQUEIROS, et al.,

20 Plaintiffs,

21 v.

22 GENERAL MOTORS LLC,

23 Defendant.

KIRKLAND & ELLIS LLP
Richard C. Godfrey (*pro hac vice*)
richard.godfrey@kirkland.com
Renee Deborah Smith (*pro hac vice*)
renee.smith@kirkland.com
300 North LaSalle
Chicago, IL 60654
Phone: (312) 862-2310

Case No.: 16-cv-07244-EMC

**GENERAL MOTORS' PROPOSED
GENERAL VERDICT FORM**

Hon. Edward M. Chen

1 Following the August 26, 2022 Final Pretrial Conference, the parties met and conferred in
2 an attempt to reach agreement on the verdict form, but have not been able to reach agreement.
3 General Motors LLC (“GM”) continues to believe that GM’s proposed verdict form (ECF No. 445)
4 is a simple, straightforward document that asks the jury whether it has found the elements of each
5 claim and defense by a preponderance of the evidence.

6 However, if the Court determines that a more streamlined general verdict form is preferable,
7 GM submits its proposed General Verdict Form as the Appendix to this filing. GM’s Proposed
8 General Verdict Form is simple, with only three questions for each claim, and it addresses three
9 fundamental flaws in plaintiffs’ proposed general verdict form.

10 First, GM’s Proposed General Verdict Form correctly accounts for the burden of proof and
11 clearly directs the jury to state whether it finds that the party with the burden of proof has proven
12 the claim or affirmative defense by a preponderance of the evidence.

13 Second, GM’s Proposed General Verdict Form correctly includes GM’s affirmative
14 defenses under the applicable statutes of limitations and the tolling doctrines plaintiffs must
15 establish to prevail on untimely claims. Plaintiffs’ proposed form omits GM’s affirmative defenses
16 entirely, but the jury must submit its finding on these issues.

17 Third, GM’s proposed Verdict Form correctly asks the jury whether it finds the elements of
18 each claim with respect to “*all*” class members. GM submits the law is clear that plaintiffs at trial
19 must prove the elements of their claims for all members of the certified class. Instructing the jury
20 to allow class-wide relief when plaintiffs only meet their burden for some, but not all, class
21 members would violate Rule 23 and The Rules Enabling Act, and would contravene Supreme Court
22 precedent. *See* 28 U.S.C. § 2075(b); *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021)
23 (“Article III does not give federal courts the power to order relief to any uninjured plaintiff, class
24 action or not.”) (citation omitted); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)
25 (“Rule 23’s requirements must be interpreted in keeping with Article III constraints, and with the
26 Rules Enabling Act, which instructs that rules of procedure ‘shall not abridge, enlarge or modify
27 any substantive right[.]’”) (citation omitted).
28

1 Accordingly, GM respectfully requests that the Court adopt its proposed general Verdict
2 Form.

3
4 DATED: September 9, 2022

Respectfully submitted,

6 /s/ April N. Ross

7 Kathleen Taylor Sooy (*pro hac vice*)

8 April N. Ross (*pro hac vice*)

9 Rachel P. Raphael (*pro hac vice*)

10 CROWELL & MORING LLP

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Phone: (202) 624-2500

11 ksooy@crowell.com

12 aross@crowell.com

rraphael@crowell.com

13 CROWELL & MORING LLP

14 Warrington S. Parker, III (SBN 148003)

3 Embarcadero Center, 26th Floor

15 San Francisco, CA 94111

Phone: (415) 986-2800

16 Fax: (415) 986-2827

17 wparker@crowell.com

18 KIRKLAND & ELLIS LLP

19 Richard C. Godfrey (*pro hac vice*)

Renee Deborah Smith (*pro hac vice*)

20 300 North LaSalle

Chicago, IL 60654

21 Phone: (312) 862-2310

richard.godfrey@kirkland.com

22 renee.smith@kirkland.com

23 *Attorneys for General Motors LLC*

APPENDIX

VERDICT FORM

**BREACH OF IMPLIED WARRANTY UNDER
CALIFORNIA SONG-BEVERLY CONSUMER WARRANTY ACT**

1. Do you find, by a preponderance of the evidence, that Plaintiffs have proven all elements of this claim for Plaintiff Tarvin and all other California Class members?

_____ YES

_____ NO

If you answered “yes” to Question #1, answer Question #2, below. If you answered “no” to Question #1, skip Questions #2 and #3, and proceed to Question # 4, below.

2. What amount do you find (if any), by a preponderance of the evidence, to be the economic damages of each member of the California Class, including Plaintiff Tarvin, for breach of implied warranty under the Song-Beverly Warranty Act?

\$ _____

If you awarded any damages, proceed to Question #3, below.

3. Do you find, by a preponderance of the evidence, that Plaintiffs have proven that GM actively and fraudulently concealed a material fact that tolls the statute of limitations?

_____ YES

_____ NO

**BREACH OF IMPLIED WARRANTY OF
MERCHANTABILITY UNDER NORTH CAROLINA LAW**

4. Do you find, by a preponderance of the evidence, that Plaintiffs have proven all elements of this claim for Plaintiff Davis and all other North Carolina Class members?

_____ YES

_____ NO

If you answered “yes” to Question #4, answer Question #5, below. If you answered “no” to Question #4, skip Questions #5 and #6, and proceed to Question # 7, below.

5. What amount do you find (if any), by a preponderance of the evidence, to be the economic damages of each member of the North Carolina Class, including Plaintiff Davis, for breach of implied warranty of merchantability under North Carolina law?

\$ _____

If you awarded any damages, proceed to Question #6, below.

6. Do you find, by a preponderance of the evidence, that Plaintiffs have proven that GM actively and fraudulently concealed a material fact that tolls the statute of limitations?

_____ YES

_____ NO

1 **VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT**

2

3 7. Do you find, by a preponderance of the evidence, that Plaintiffs have proven all elements

4 of this claim for Plaintiff Del Valle and all other Idaho Class members?

5 _____ YES

6 _____ NO

7

8 **If you answered “yes” to Question #7, answer Question #8, below. If you answered “no” to**

9 **Question #7, there are no further questions.**

10

11 8. What amount do you find (if any), by a preponderance of the evidence, to be the economic

12 damages of each member of the Idaho Class, including Plaintiff Del Valle, for violation of the Idaho

13 Consumer Protection Act?

14 \$ _____

15

16 **If you awarded any damages, proceed to Question #9, below.**

17

18 9. Do you find, by a preponderance of the evidence, that Plaintiffs have proven that Plaintiff

19 Del Valle and all other Idaho Class members did not know, and through the exercise of reasonable

20 diligence could not have known, that their claim might exist before December 19, 2014?

21 _____ YES

22 _____ NO

23

24

25

26

27

28